IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 23847 of 2014

The Statesman Limited

Vs

The State of West Bengal & Ors.

For the Petitioner	**:**	Mr. Soumya Majumdar, Sr.Adv. Ms. Amrita Pandey, Mr. Ghanshyam Pandey, Ms. Sneha Singh.
For the P.F. Authorities	**:**	Mr. Shiv Chandra Prasad.
For the Respondent No. 7	**:**	Mr. Anirban Kar, Mr. Munshi Ashiq Elahi, Ms. Snigdha Das, Ms. Khushnuma Akhtar Ansari.
Judgment reserved on	**:**	25.08.2025
Judgment delivered on	**:**	18.09.2025

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred challenging an order dated June 30, 2014 vide No.385 – LW /PF – 48 /2009 issued by the respondent no.2 /The Secretary, Labour Department, and Memo No. R – EX /WB /1266 /385 (INDEX) /CC – VI /RO

/KOL /781(i) dated July 30, 2014 issued to the Senior Vice President and the Chairman, BOT, the Statesman Ltd. by the respondent No.5/the R.P.F. Authority and give the petitioner sufficient opportunity to be heard on production of all documents. The petitioner has further challenged, Memo No. A /SPL /Security /WB/1266 /RO /1259 (i), dated August 05, 2014, issued to the petitioner by the respondent No.5/RPF Authority. The final relief prayed for by the petitioner is to stop the cancellation of the exemption for the employees of the petitioner company under the provision of Section 27A of the Employee's Provident Fund Scheme.

2. The petitioner's case is that the establishment of the Petitioner company continued to be governed by the condition of exemption as notified in terms of Section 17(1)(a) of the said Act, and at all material times, was applicable to the establishment of the Petitioner.

3. Since the said establishment in respect of the said company was declared to be an "exempted establishment" in terms of the provisions contained in Section 17 of the said Act of 1952, a Board of Trustees was duly established for the administration of the affairs relating to collection, deposit, investment and all other matters relating to provident fund contributions of the employees of the said company.

4. On or about May 15, 2014, alleging violation of several provisions of Para 27AA of the said Scheme of 1952, the respondents wrongfully and illegally held out a threat to recommend for cancellation of exemption to the appropriate government for the alleged irregularities of the provisions of Para 27AA of the said Scheme of 1952.

5. The Petitioner submits that being an establishment exempted from the coverage of EPF Scheme, 1952 and being governable only by the terms and conditions as delineated in the conditions for grant of exemption in the Notification, the provisions of Appendix A to Para 27AA of the EPF Scheme, 1952 ipso-facto does not apply to the establishment of the Petitioner Company. Furthermore, the provident fund authorities have neither power nor jurisdiction to recommend cancellation of exemption.

6. **On or about June 30, 2014, the State Government vide an order being no. 385 - LW/PF-48/2009 cancelled the exemption granted to the Petitioner company on the ground that there was violation of Para 27AA and the Appendix A of the said Scheme of 1952.**

7. The Petitioner states that the concerned respondent authorities have cancelled the said exemption in total violation of principles of natural justice without giving the Petitioner any opportunity of hearing and the orders are otherwise bad in law and are liable to be set aside and/or quashed. As such the impugned show cause notice and order dated June 30, 2014 and subsequent proceedings initiated are vitiated by error of law apparent on the face of record and are not sustainable in law as the impugned show cause notice and order dated June 30, 2014 are also not reasoned orders.

8. The petitioner has filed written notes and relied upon the following judgments:-

i. ***Caledonian Jute & Industries Ltd. & Anr. vs Union of India & Ors., in W.P. 6138(W) of 2009, decided on 14.11.2011, (Single Bench).***

ii. ***Caledonian Jute & Industries Ltd. & Anr. vs Union of India & Ors., in W.P. 6138(W) of 2009, 2018 SCC OnLine Cal 3462, decided on 05.02.2018, (Division Bench).***

iii. ***Delta Ltd. And Another And Regional Provident Fund Commissioner II, West Bengal, Sikkim and the***

Andaman and Nicobar Islands and Another, 2005 (3) L.L.N. 1008, decided on 3 March, 2005.

9. The response of the EPF Authorities, in their affidavit-in-opposition is as follows:-

> *"That the Statesman Limited is covered under the purview of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 hereinafter referred to as the 'said Act' and was allotted a Provident Fund Code No. WB/1266 for effecting compliance and the establishment has subsequently been granted exemption under para 27A of the Scheme from the appropriate Government vide Notification No.2274/1(4)/PF dated 04.05.1963.*
>
> *That during audit inspection for the period January, 2007 to October, 2008, the squad of Enquiry Officers have detected various irregularities and issued Part-II report to the establishment vide dated 31.10.2008 and considering the status of the said irregularities, the then Regional Provident Fund Commissioner-1 had forwarded recommendation for cancellation of exemption to the Head Office vide letter No.R-EX/WB/CA/1266/CC-VI/1066 dated 10.02.2009 stating the irregularities as the establishment is loss making establishment for consecutive 3 financial years namely 2005-06, 2006-07 and 2007-08. The BOT is not crediting interest. The Trust Rule is not updated and the BOT invest the Securities in Central Government below the statutory rate i.e. less than 25%. Further as per documents available in the old volume of compliance file, it is noticed that a letter vide No.R-EX/WB/1266/CA/CC-VI/2480 dated 25.02.2010 was sent to the Head Office in continuation to the*

letter dated 10.2.2009 enclosing a copy of notification dated 04.05.1963 along with upto date compliance position as Government of West Bengal vide letter No.1158-LA/PF-48/2009 dated 25.11.2009 asked for the said document. Further the establishment/BOT has been issued notice vide Notice dated 25.02.2010 on the basis of irregularities detected by the squad during Compliance Audit Inspection 2008-09 and issued Part-II inspection report dated 02.01.2010 wherein it was categorically directed to the Establishment/BOT to show the reason as to why the violation be not brought to the notice to the appropriate authority and the penal action as contemplated under section 14 of the Act 52 be not launched and upon receipt of the said notice the said establishment made a reply on 28.04.2010.

That further compliance audit inspection also been carried on for the period 2009-10 and again detected various irregularities by the Squad of Enquiry Officers and issued Part-II Inspection Report dated 01.02.2011 and also proposed for prosecution dated 07.02.2011 for non payment of employees' share of Provident Fund contribution to the BOT from February 2008 to October, 2010 towards payment of Pension Fund Contributions in A/c.No.10 for the period from July, 2008 to October, 2010 towards payment of inspection charges in A/c. No.2 and 22 from October, 2009 to October, 2010.

That the said establishment filed a writ petition being No.W.P.13740(W) of 2010 on being aggrieved by the said 7A order and the demand notice and obtained an order of Stay on 21.07.2010.

That several employees lodged several complaints before the competent authority regarding non settlement of Provident Fund Claim

> *by the Trust and also payment of loss and interest and ultimately Government of West Bengal, Labour Department issued notification vide No.385/LW/PF-48/2009 dated 30.6.2014 to cancel the exemption granted to the establishment with immediate effect."*

10. It is further submitted by the respondent that considering the huge irregularities and deviations/departure from the mandatory provisions of the conditions governing exemption as stipulated under Para 27AA, Appendix A, the establishment cannot claim and enjoy its exemption status upon concept observation of violations of the provision and has prayed for dismissal of the writ application.

11. Written notes has been filed by the petitioner, relying upon the judgment in ***Delta Ltd. And Another And Regional Provident Fund Commissioner II, West Bengal, Sikkim and the Andaman and Nicobar Islands and Another*, 2005 (3) L.L.N. 1008, decided on 3 March, 2005,** wherein the Division Bench of the Calcutta High Court has categorically held:-

> ***"4.2.*** *Admittedly, Regional Provident Fund Authority is a prescribed authority under the 1952 Act. The definition of "appropriate Government" defined in S. 2(a) by no stretch of imagination can include the Regional Provident Fund Authority neither it includes the Central Board. Therefore, neither the Central Board nor the Regional Provident Fund Commissioner has any jurisdiction*

with regard to the cancellation of the exemption granted by the appropriate Government. Inasmuch as, Sub-sec. (4) of S. 17 makes it clear that such exception can be cancelled by the authority, which granted it, namely the appropriate Government. There is no doubt about the grounds on which such cancellation can be made. These have not been disputed by the parties. But from the scheme of the Act, it does not appear that the Commissioner or the Board has any jurisdiction to recommend cancellation unless the views of the Central Board is asked for by the appropriate Government and the Regional Provident Fund Commissioner is asked to use or utilize its mechanism for collecting materials and place the same before the Central Board for forming its opinion or views to be communicated to the appropriate Government. Therefore, having regard to the scheme of the Act itself, we do not think that the Commissioner on its own is entitled to recommend cancellation.

4.4. *Section 19 provides that the appropriate Government may direct that any power or authority or jurisdiction exercisable by it under the Act in relation to such matters and subject to such conditions, if any, as may be specified in the direction may be exercisable by such officer or authority subordinate to the Central Government or by the State Government or by such officer or authority subordinate to the State Government as may be specified in the notification where the appropriate Government is the Central Government and by such officer or authority subordinate to the State Government as may be specified in the notification where the appropriate Government is the State Government. Our attention has not been drawn to any such delegation or power upon the Regional Provident*

> *Fund Commissioner to exercise the power exercisable by the appropriate Government. In the absence of any provision empowering the Regional Provident Fund Commissioner to exercise any jurisdiction in relation to S. 17(4), it cannot assume jurisdiction to discharge any of the functions exercisable by the appropriate Government. At the same time, however, there is nothing to prevent the Regional Provident Fund Commissioner to report non-compliance to the Central Board, which may bring the same to the notice of the appropriate Government. This may be part of the internal administration, but it cannot empower any of these authorities to recommend cancellation of exemption granted under S. 17."*

12. **In the order dated 30.06.2014 under challenge, which cancels the exemption of the petitioner company,** the Secretary to the Govt. of West Bengal, Labour Department, passed an order as follows:-

> ***"ORDER***
>
> *WHEREAS By the Government of West Bengal, Labour Department at Notification No. 2274-PF dt the 4th May, 1963 (hereinafter referred to as the said notification) M/s The Statesman Ltd (hereinafter referred to as the said establishment) was granted exemption from the operation of the Employees' Provident Fund Schemes, 1952, framed under Employees' Provident Fund & Miscellaneous Provisions Act, 1952, (hereinafter referred to as the said Act), subject to the conditions specified in the said notification.*

And WHEREAS ***after due discussion with the representatives of EPFO*** *and after going through the relevant papers/documents submitted by the EPFO, it appears that the following violations of conditions of exemption committed by the establishment:-*

I) The establishment is loss making organization for three consecutive financial, years viz. 2005-06, 2006-07 and 2007-08.

II) Board of Trustees is not crediting interest,

III) Trust rules not updated,

IV) Board of trustees invest the securities in Central Government below the statutory rate (i.e. less than 25%).

And WHEREAS the State Government, being the appropriate authority to issue order of cancellation of the exemption so granted, in writing as provided U/s 17(4) of the said Act, deems it fit to cancel the said exemption.

NOW THEREFORE, in exercise of the power conferred u/s 17(4) of the said Act, the Governor is pleased; hereby, to cancel the exemption granted to M/s The Statesman Ltd (WB/1266) Under the said Act with immediate effect.

By order of the Governor
Sd/-
(Amal Roy Chowdhury)
Secretary to the Government of West Bengal"

13. The said government order clearly notes that only the representative of EPFO were heard. No hearing was admittedly given to the petitioner herein.

14. The Supreme Court in ***Krishnadatt Awasthy Versus State of M.P. & Ors., in Civil Appeal No(S). 4806 OF 2011, decided on January 29, 2025,*** held:-

> *"68. The principle of audi alteram partem is the cornerstone of justice, ensuring that* ***no person is condemned unheard.*** *This principle transforms justice from a mere technical formality into a humane pursuit. It safeguards against arbitrary decision-making, and is needed more so in cases of unequal power dynamics.*
>
> *69. An allegation of bias, can only be proved if facts are established after* ***giving an opportunity of hearing.*** *This process requires a fair and transparent procedure in which the concerned parties are given an adequate opportunity to present their case. Such an opportunity allows the accused party or the affected individuals to respond to the allegations, provide evidence, and clarify any misgivings regarding the decision-making process. Therefore, for an allegation of bias to be proved, it is imperative that the procedural safeguards of a fair hearing are observed allowing for establishment of the relevant facts."*

15. The said observation of the Supreme Court is applicable in all situations/cases, where a party has not been given a hearing, more so when the order passed without hearing a party, has caused prejudice.

16. Thus, admittedly there has been no opportunity of a hearing given to the petitioner herein by the authority/respondent no. 2 and as such, relying upon the judgment in ***Krishnadatt Awasthy Versus State of M.P. & Ors. (Supra)*** the order dated

June 30, 2014, passed by the Secretary, Labour Department, being against the principle of natural justice, **is hereby set aside.**

17. **Consequently, the order dated 05th August, 2014,** issued by the respondent no. 5, vide memo no. A /SPL /Security /WB/1266 /RO /1259 (i), **which relates to the transfer of past accumulation dues/total fund in respect of M/s. the Statesman Ltd. (WB/1266),** issued on the basis of the order dated 30.06.2014, passed by the Govt. of West Bengal, **is also set aside.**

18. **WPA 23847 of 2014 is allowed.**

19. The Secretary, Govt. of West Bengal, Labour Department shall conduct a fresh hearing, in presence of the parties and on providing an opportunity of hearing, also to the petitioner herein, decide the issue of withdrawal of exemption of the petitioner establishment by permitting the parties, more so the petitioner to adduce evidence both oral and documentary and on proper hearing decide the issue in accordance with law.

20. Connected application, if any, stands disposed of.

21. Interim order, if any, stands vacated.

22. Urgent Photostat certified copy of this Judgment, if applied for, be given to the learned counsel for the parties on usual undertakings.

[Shampa Dutt (Paul). J]